



# Senate

General Assembly

**File No. 697**

*January Session, 2009*

Substitute Senate Bill No. 1003

*Senate, April 20, 2009*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT CONCERNING AFFIRMATIVE ACTION PLANS, HOUSING DISCRIMINATION AND ATTORNEY'S FEES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 46a-54 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2009*):

4 The commission shall have the following powers and duties:

5 (1) To establish and maintain such offices as the commission may  
6 deem necessary;

7 (2) To organize the commission into a division of affirmative action  
8 monitoring and contract compliance, a division of discriminatory  
9 practice complaints and such other divisions, bureaus or units as may  
10 be necessary for the efficient conduct of business of the commission;

11 (3) To employ legal staff and commission legal counsel as necessary  
12 to perform the duties and responsibilities under section 46a-55. One

13 commission legal counsel shall serve as supervising attorney. Each  
14 commission legal counsel shall be admitted to practice law in this state;

15 (4) To appoint such investigators and other employees and agents as  
16 it deems necessary, fix their compensation within the limitations  
17 provided by law and prescribe their duties;

18 (5) To adopt, publish, amend and rescind regulations consistent  
19 with and to effectuate the provisions of this chapter;

20 (6) To establish rules of practice to govern, expedite and effectuate  
21 the procedures set forth in this chapter;

22 (7) To recommend policies and make recommendations to agencies  
23 and officers of the state and local subdivisions of government to  
24 effectuate the policies of this chapter;

25 (8) To receive, initiate as provided in section 46a-82, as amended by  
26 this act, investigate and mediate discriminatory practice complaints;

27 (9) By itself or with or by hearing officers or human rights referees,  
28 to hold hearings, subpoena witnesses and compel their attendance,  
29 administer oaths, take the testimony of any person under oath and  
30 require the production for examination of any books and papers  
31 relating to any matter under investigation or in question;

32 (10) To make rules as to the procedure for the issuance of subpoenas  
33 by individual commissioners, hearing officers and human rights  
34 referees;

35 (11) To require written answers to interrogatories under oath  
36 relating to any complaint under investigation pursuant to this chapter  
37 alleging any discriminatory practice as defined in subdivision (8) of  
38 section 46a-51, and to adopt regulations, in accordance with the  
39 provisions of chapter 54, for the procedure for the issuance of  
40 interrogatories and compliance with interrogatory requests;

41 (12) To utilize such voluntary and uncompensated services of

42 private individuals, agencies and organizations as may from time to  
43 time be offered and needed and with the cooperation of such agencies,  
44 (A) to study the problems of discrimination in all or specific fields of  
45 human relationships, and (B) to foster through education and  
46 community effort or otherwise good will among the groups and  
47 elements of the population of the state;

48 (13) To require the posting by an employer, employment agency or  
49 labor organization of such notices regarding statutory provisions as  
50 the commission shall provide;

51 (14) To require the posting, by any respondent or other person  
52 subject to the requirements of section 46a-64, 46a-64c, 46a-81d or 46a-  
53 81e, of such notices of statutory provisions as it deems desirable;

54 (15) (A) To require an employer having three or more employees to  
55 post in a prominent and accessible location information concerning the  
56 illegality of sexual harassment and remedies available to victims of  
57 sexual harassment; and (B) to require an employer having fifty or more  
58 employees to provide two hours of training and education to all  
59 supervisory employees within one year of October 1, 1992, and to all  
60 new supervisory employees within six months of their assumption of a  
61 supervisory position, provided any employer who has provided such  
62 training and education to any such employees after October 1, 1991,  
63 shall not be required to provide such training and education a second  
64 time. Such training and education shall include information  
65 concerning the federal and state statutory provisions concerning  
66 sexual harassment and remedies available to victims of sexual  
67 harassment. As used in this subdivision, "sexual harassment" [shall  
68 have] has the same meaning as set forth in subdivision (8) of  
69 subsection (a) of section 46a-60, and "employer" [shall include]  
70 includes the General Assembly;

71 (16) To require each state agency that employs one or more  
72 employees to (A) provide a minimum of three hours of diversity  
73 training and education (i) to all supervisory and nonsupervisory  
74 employees, not later than July 1, 2002, with priority for such training to

75 supervisory employees, and (ii) to all newly hired supervisory and  
76 nonsupervisory employees, not later than six months after their  
77 assumption of a position with a state agency, with priority for such  
78 training to supervisory employees. Such training and education shall  
79 include information concerning the federal and state statutory  
80 provisions concerning discrimination and hate crimes directed at  
81 protected classes and remedies available to victims of discrimination  
82 and hate crimes, standards for working with and serving persons from  
83 diverse populations and strategies for addressing differences that may  
84 arise from diverse work environments; and (B) submit [an annual] as  
85 part of its affirmative action plan a report to the Commission on  
86 Human Rights and Opportunities concerning the status of the  
87 diversity training and education required under subparagraph (A) of  
88 this subdivision. The information in such [annual reports] report shall  
89 be reviewed by the commission. [for the purpose of submitting an  
90 annual summary report to the General Assembly.] Notwithstanding  
91 the provisions of this section, if a state agency has provided such  
92 diversity training and education to any of its employees prior to  
93 October 1, 1999, such state agency shall not be required to provide  
94 such training and education a second time to such employees. The  
95 requirements of this subdivision shall be accomplished within  
96 available appropriations. As used in this subdivision, "employee"  
97 [shall include] includes any part-time employee who works more than  
98 twenty hours per week;

99 (17) To require each agency to submit information demonstrating its  
100 compliance with subdivision (16) of this section as part of its  
101 affirmative action plan and to receive and investigate complaints  
102 concerning the failure of a state agency to comply with the  
103 requirements of subdivision (16) of this section; and

104 (18) To enter into contracts for and accept grants of private or  
105 federal funds and to accept gifts, donations or bequests, including  
106 donations of service by attorneys.

107 Sec. 2. Subsection (a) of section 46a-56 of the general statutes is

108 repealed and the following is substituted in lieu thereof (*Effective*  
109 *October 1, 2009*):

110 (a) The commission shall:

111 (1) Investigate the possibilities of affording equal opportunity of  
112 profitable employment to all persons, with particular reference to job  
113 training and placement;

114 (2) Compile facts concerning discrimination in employment,  
115 violations of civil liberties and other related matters;

116 (3) Investigate and proceed in all cases of discriminatory practices as  
117 provided in this chapter and noncompliance with the provisions of  
118 section 4a-60 or 4a-60a or sections 46a-68c to 46a-68f, inclusive;

119 (4) From time to time, but not less than once a year, report to the  
120 Governor as provided in section 4-60, making recommendations for  
121 the removal of such injustices as it may find to exist and such other  
122 recommendations as it deems advisable and describing the  
123 investigations, proceedings and hearings it has conducted and their  
124 outcome, the decisions it has rendered and the other work it has  
125 performed;

126 (5) Monitor state contracts to determine whether they are in  
127 compliance with sections 4a-60 and 4a-60a, and those provisions of the  
128 general statutes which prohibit discrimination; and

129 (6) Compile data concerning state contracts with female and  
130 minority business enterprises and submit a report [annually]  
131 biennially to the General Assembly concerning the employment of  
132 such business enterprises as contractors and subcontractors.

133 Sec. 3. Section 46a-68 of the general statutes is repealed and the  
134 following is substituted in lieu thereof (*Effective October 1, 2009*):

135 (a) Each state agency, department, board and commission shall  
136 develop and implement, in cooperation with the Commission on

137 Human Rights and Opportunities, an affirmative action plan that  
138 commits the agency, department, board or commission to a program of  
139 affirmative action in all aspects of personnel and administration. Such  
140 plan shall be developed pursuant to regulations adopted by the  
141 Commission on Human Rights and Opportunities, in accordance with  
142 chapter 54, to ensure that affirmative action is undertaken as required  
143 by state and federal law to provide equal employment opportunities  
144 and to comply with all responsibilities under the provisions of sections  
145 4-61u to 4-61w, inclusive, sections 46a-54 to 46a-64, inclusive, as  
146 amended by this act, section 46a-64c and sections 46a-70 to 46a-78,  
147 inclusive. The executive head of each such agency, department, board  
148 or commission shall be directly responsible for the development, filing  
149 and implementation of such affirmative action plan.

150 (b) (1) Each state agency, department, board or commission shall  
151 designate a full-time or part-time affirmative action officer. If such  
152 affirmative action officer is an employee of the agency, department,  
153 board or commission, the executive head of the agency, department,  
154 board or commission shall be directly responsible for the supervision  
155 of the officer.

156 (2) The Commission on Human Rights and Opportunities shall  
157 provide training and technical assistance to affirmative action officers  
158 in plan development and implementation.

159 (3) The Commission on Human Rights and Opportunities and the  
160 Permanent Commission on the Status of Women shall provide training  
161 concerning state and federal discrimination laws and techniques for  
162 conducting investigations of discrimination complaints to persons  
163 designated by state agencies, departments, boards or commissions as  
164 affirmative action officers and persons designated by the Attorney  
165 General or the Attorney General's designee to represent such agencies,  
166 departments, boards or commissions pursuant to subdivision (5) of  
167 this subsection. Such training shall be provided for a minimum of ten  
168 hours during the first year of service or designation, and a minimum of  
169 five hours per year thereafter.

170 (4) (A) Each person designated by a state agency, department, board  
171 or commission as an affirmative action officer shall (i) be responsible  
172 for mitigating any discriminatory conduct within the agency,  
173 department, board or commission, (ii) investigate all complaints of  
174 discrimination made against the state agency, department, board or  
175 commission, and (iii) report all findings and recommendations upon  
176 the conclusion of an investigation to the commissioner or director of  
177 the state agency, department, board or commission for proper action.

178 (B) Notwithstanding the provisions of subparagraphs (A)(i), (A)(ii)  
179 and (A)(iii) of this subdivision, if a discrimination complaint is made  
180 against the executive head of a state agency or department, any  
181 member of a state board or commission or any affirmative action  
182 officer alleging that the executive head, member or officer directly or  
183 personally engaged in discriminatory conduct, or if a complaint of  
184 discrimination is made by the executive head of a state agency, any  
185 member of a state board or commission or any affirmative action  
186 officer, the complaint shall be referred to the Commission on Human  
187 Rights and Opportunities for review and, if appropriate, investigation  
188 by the Department of Administrative Services. If the discrimination  
189 complaint is made by or against the executive head, any member or  
190 the affirmative action officer of the Commission on Human Rights and  
191 Opportunities alleging that the executive head, member or officer  
192 directly or personally engaged in discriminatory conduct, the  
193 commission shall refer the complaint to the Department of  
194 Administrative Services for review and, if appropriate, investigation. If  
195 the complaint is by or against the executive head or affirmative action  
196 officer of the Department of Administrative Services, the complaint  
197 shall be referred to the Commission on Human Rights and  
198 Opportunities for review and, if appropriate, investigation. Each  
199 person who conducts an investigation pursuant to this subparagraph  
200 shall report all findings and recommendations upon the conclusion of  
201 such investigation to the appointing authority of the individual who  
202 was the subject of the complaint for proper action. The provisions of  
203 this subparagraph shall apply to any such complaint pending on or  
204 after July 5, 2007.

205 (5) Each person designated by a state agency, department, board or  
206 commission as an affirmative action officer, and each person  
207 designated by the Attorney General or the Attorney General's designee  
208 to represent an agency pursuant to subdivision (6) of this subsection,  
209 shall complete training provided by the Commission on Human Rights  
210 and Opportunities and the Permanent Commission on the Status of  
211 Women pursuant to subdivision (3) of this subsection.

212 (6) No person designated by a state agency, department, board or  
213 commission as an affirmative action officer shall represent such  
214 agency, department, board or commission before the Commission on  
215 Human Rights and Opportunities or the Equal Employment  
216 Opportunity Commission concerning a discrimination complaint. If a  
217 discrimination complaint is filed with the Commission on Human  
218 Rights and Opportunities or the Equal Employment Opportunity  
219 Commission against a state agency, department, board or commission,  
220 the Attorney General, or the Attorney General's designee, other than  
221 the affirmative action officer for such agency, department board or  
222 commission, shall represent the state agency, department, board or  
223 commission before the Commission on Human Rights and  
224 Opportunities or the Equal Employment Opportunity Commission.

225 (c) Each state agency, department, board and commission shall file  
226 an affirmative action plan developed in accordance with subsection (a)  
227 of this section [.] with the Commission on Human Rights and  
228 Opportunities [.] semiannually [.] except that any state agency,  
229 department, board or commission which has an affirmative action plan  
230 approved by the commission may be permitted to file its plan on an  
231 annual basis in a manner prescribed by the commission and any state  
232 agency, department, board or commission that employs twenty or  
233 fewer full-time employees shall file its affirmative action plan  
234 biennially. If a state agency, department, board or commission files an  
235 affirmative action plan more than ninety days after the deadline for  
236 such plan as set forth in the schedule for the filing of plans established  
237 pursuant to subsection (g) of this section, the plan shall be deemed  
238 disapproved and the agency, department, board or commission shall



239 file a new plan not later than six months after the date the original plan  
240 was filed.

241 (d) The Commission on Human Rights and Opportunities shall  
242 review and formally approve, conditionally approve or disapprove the  
243 content of such affirmative action plans within ninety days of the  
244 submission of each plan to the commission. If the commissioners, by a  
245 majority vote of those present and voting, fail to approve,  
246 conditionally approve or disapprove a plan within that period, the  
247 plan shall be deemed to be approved.

248 (e) The Commissioner of Administrative Services and the Secretary  
249 of the Office of Policy and Management shall cooperate with the  
250 Commission on Human Rights and Opportunities to insure that the  
251 State Personnel Act and personnel regulations are administered, and  
252 that the process of collective bargaining is conducted by all parties in a  
253 manner consistent with the affirmative action responsibilities of the  
254 state.

255 (f) The Commission on Human Rights and Opportunities shall  
256 monitor the activity of such plans within each state agency,  
257 department, board and commission and report to the Governor [and  
258 the General Assembly on or before April first of each year concerning  
259 the results of such plans] if any state agency, department, board or  
260 commission fails to file such plan.

261 (g) The Commission on Human Rights and Opportunities shall  
262 adopt regulations, in accordance with chapter 54, to carry out the  
263 requirements of this section. [Such regulations shall include] The  
264 Commission on Human Rights and Opportunities shall promulgate a  
265 schedule for semiannual, annual and biennial filing of plans. The  
266 schedule shall not be deemed to be a regulation, as defined in section  
267 4-166.

268 Sec. 4. Section 46a-82 of the general statutes is repealed and the  
269 following is substituted in lieu thereof (*Effective October 1, 2009*):

270 (a) Any person claiming to be aggrieved by an alleged  
271 discriminatory practice, except for an alleged violation of section 4a-  
272 60g or 46a-68, as amended by this act, or the provisions of sections 46a-  
273 68c to 46a-68f, inclusive, may, by himself or herself or by such person's  
274 attorney, make, sign and file with the commission a complaint in  
275 writing under oath, which shall state the name and address of the  
276 person alleged to have committed the discriminatory practice, and  
277 which shall set forth the particulars thereof and contain such other  
278 information as may be required by the commission. After the filing of a  
279 complaint pursuant to this subsection, the commission shall serve  
280 upon the person claiming to be aggrieved a notice that: (1)  
281 Acknowledges receipt of the complaint; and (2) advises of the time  
282 frames and choice of forums available under this chapter. For the  
283 purposes of this section, a "person claiming to be aggrieved" means a  
284 person who claims to have been injured by a discriminatory practice or  
285 who believes that he or she will be injured by a discriminatory practice  
286 that is about to occur.

287 (b) The commission, whenever it has reason to believe that any  
288 person has been engaged or is engaged in a discriminatory practice,  
289 may issue a complaint, except for a violation of subsection (a) of  
290 section 46a-80.

291 (c) The commission, whenever it has reason to believe that any  
292 contractor or subcontractor is not complying with antidiscrimination  
293 statutes or contract provisions required under section 4a-60, 4a-60a or  
294 4a-60g or the provisions of sections 46a-68c to 46a-68f, inclusive, may  
295 issue a complaint.

296 (d) The commission may issue a complaint if: (1) An affirmative  
297 action plan filed pursuant to section 46a-68, as amended by this act, is  
298 in violation of any of the provisions of section 4-61u or 4-61w, sections  
299 46a-54 to 46a-64, inclusive, as amended by this act, section 46a-64c or  
300 sections 46a-70 to 46a-78, inclusive; or (2) an agency, department,  
301 board or commission fails to submit an affirmative action plan  
302 required under section 46a-68, as amended by this act.

303 (e) Any employer whose employees, or any of them, refuse or  
304 threaten to refuse to comply with the provisions of section 46a-60 or  
305 46a-81c may file with the commission a written complaint under oath  
306 asking for assistance by conciliation or other remedial action.

307 (f) Any complaint filed pursuant to this section must be filed within  
308 one hundred and eighty days after the alleged act of discrimination,  
309 except that any complaint by a person claiming to be aggrieved by a  
310 violation of subsection (a) of section 46a-80 must be filed within thirty  
311 days of the alleged act of discrimination.

312 Sec. 5. Subsection (d) of section 46a-83 of the general statutes is  
313 repealed and the following is substituted in lieu thereof (*Effective*  
314 *October 1, 2009*):

315 (d) (1) Before issuing a finding of reasonable cause or no reasonable  
316 cause, the investigator shall afford each party and his representative an  
317 opportunity to provide written or oral comments on all evidence in the  
318 commission's file, except as otherwise provided by federal law or any  
319 other provision of the general statutes. The investigator shall consider  
320 such comments in making his determination. The investigator shall  
321 make a finding of reasonable cause or no reasonable cause in writing  
322 and shall list the factual findings on which it is based not later than one  
323 hundred ninety days from the date of the determination based on the  
324 review of the complaint, conducted pursuant to subsection (b) of this  
325 section, except that for good cause shown, the executive director or his  
326 designee may grant no more than two extensions of the investigation  
327 of three months each.

328 (2) If the investigator makes a determination that there is reasonable  
329 cause to believe that a violation of section 46a-64c has occurred, the  
330 complainant and the respondent shall have twenty days from receipt  
331 of notice of the reasonable cause finding to elect a civil action in lieu of  
332 an administrative hearing pursuant to section 46a-84. If either the  
333 complainant or the respondent requests a civil action, the commission,  
334 through the Attorney General or a commission legal counsel, shall  
335 commence an action pursuant to subsection (b) of section 46a-89

336 within ninety days of receipt of the complainant's or the respondent's  
337 notice of election of a civil action. A complainant may intervene as a  
338 matter of right in the civil action without permission of the court or the  
339 parties. If the Attorney General or a commission legal counsel, and a  
340 commissioner, believe that injunctive relief, punitive damages or a civil  
341 penalty would be appropriate, such relief, damages or penalty may  
342 also be sought pursuant to said subsection. Any civil action brought  
343 under this subdivision shall be limited to such claims, counterclaims,  
344 defenses or the like that would be required for the commission to have  
345 jurisdiction over the complaint had the complaint remained with the  
346 commission for disposition. If the Attorney General or a commission  
347 legal counsel determines that a material mistake of law or fact has been  
348 made in such finding of reasonable cause, the Attorney General or a  
349 commission legal counsel may decline to bring a civil action and, in  
350 such case, shall remand the file to the investigator for further action.  
351 The investigator shall complete any such action not later than ninety  
352 days after receipt of such file.

353 Sec. 6. Subsection (c) of section 46a-86 of the general statutes is  
354 repealed and the following is substituted in lieu thereof (*Effective*  
355 *October 1, 2009*):

356 (c) In addition to any other action taken under this section, upon a  
357 finding of a discriminatory practice prohibited by section 46a-58, 46a-  
358 59, 46a-64, 46a-64c, 46a-81b, 46a-81d or 46a-81e, the presiding officer  
359 shall determine the damage suffered by the complainant, which  
360 damage shall include, but not be limited to, the expense incurred by  
361 the complainant for obtaining alternate housing or space, storage of  
362 goods and effects, moving costs and other costs actually incurred by  
363 the complainant as a result of such discriminatory practice and shall  
364 allow reasonable attorney's fees and costs. The amount of attorney's  
365 fees awarded shall not be contingent upon the amount of damages  
366 requested by or awarded to the complainant.

367 Sec. 7. Section 46a-104 of the general statutes is repealed and the  
368 following is substituted in lieu thereof (*Effective October 1, 2009*):

369 The court may grant a complainant in an action brought in  
370 accordance with section 46a-100 such legal and equitable relief which it  
371 deems appropriate including, but not limited to, temporary or  
372 permanent injunctive relief, attorney's fees and court costs. The  
373 amount of attorney's fees awarded shall not be contingent upon the  
374 amount of damages requested by or awarded to the complainant.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2009</i>	46a-54(a)
Sec. 2	<i>October 1, 2009</i>	46a-56(a)
Sec. 3	<i>October 1, 2009</i>	46a-68
Sec. 4	<i>October 1, 2009</i>	46a-82
Sec. 5	<i>October 1, 2009</i>	46a-83(d)
Sec. 6	<i>October 1, 2009</i>	46a-86(c)
Sec. 7	<i>October 1, 2009</i>	46a-104

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

This bill makes changes to the reporting requirements of state agencies to the Commission on Human Rights and Opportunities (CHRO) and to the reporting requirements of CHRO to the General Assembly. There is no anticipated fiscal impact associated with these changes.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sSB 1003*****AN ACT CONCERNING AFFIRMATIVE ACTION PLANS, HOUSING DISCRIMINATION AND ATTORNEY'S FEES.*****SUMMARY:**

This bill makes several changes in various laws that the Commission on Human Rights and Opportunities (CHRO) enforces.

The law requires any state agency, department, board, or commission to file, semiannually, an affirmative action plan with CHRO. The bill makes plans filed more than 90 days after the scheduled deadline disapproved, requiring the entity to file a new plan within six months of the original filing date. It lessens CHRO's reporting requirements by eliminating its duty to report to the legislature, while maintaining its duty to report to the governor, entities failing to file affirmative action plans. Under the bill, the CHRO schedule for filing plans will continue to be promulgated by CHRO but will not, unlike under current law, be a regulation under the Uniform Administrative Procedure Act.

The bill eliminates a requirement that each state agency submit annually a report to CHRO on the status of diversity training and education. Instead, it requires the agency to submit this information to CHRO as part of its affirmative action plan. By law, each state agency must submit an affirmative action plan semiannually, except any agency that (1) has an affirmative action plan approved by CHRO may file its plan annually, and (2) employs 20 or fewer full-time employees must file its plan biennially. The bill eliminates the requirement that CHRO submit annually to the general assembly a report summarizing the reports from state agencies on the status of diversity training and education.

The bill also requires CHRO to submit a report with data on state contracts with female and minority business enterprises biennially, rather than annually, to the General Assembly.

The bill defines “person claiming to be aggrieved” by an alleged discriminatory practice for the purposes of filing a complaint with CHRO as a person claiming to have been, or believing he or she will be, injured by a discriminatory practice that is about to occur.

The bill allows a complainant to intervene as a matter of right, without the court’s or other parties’ permission, in a civil action commenced by the attorney general or a CHRO legal counsel as a result of a determination of reasonable cause in a discriminatory housing practice complaint investigation.

Under the bill, attorney’s fees awarded as a result of a CHRO hearing on a discriminatory practice or a Superior Court action must not be contingent on the amount of damages requested by, or awarded to, the complainant.

EFFECTIVE DATE: October 1, 2009

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 37      Nay 1      (04/01/2009)